

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of Telecommunications	)	D.T.E. 03-60
And Energy on its own Motion to Implement the	)	
Requirements of the Federal Communications	)	
Commission's Triennial Review Order Regarding	)	
Switching for Mass Market Customers	)	
<hr/>		

**SPRINT'S COMMENTS AND REQUEST TO PARTICIPATE**

Sprint Communications Company L.P. ("Sprint") respectfully submits these Comments and Request to Participate in the above-captioned proceeding in response to the Department's Vote and Order to Open Proceeding ("Order") and Notice of Investigation ("Notice") dated August 26, 2003 for the above-referenced dockets, as well as the Procedural Memorandum ("Procedural Memorandum") issued in this docket on September 9, 2003.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The Department's Order requested parties to submit, by September 16, 2003, written requests to participate and comments on the scope, nature, and timing of the Department's inquiry.

While Sprint is still reviewing the FCC's Triennial Review Order ("TR Order")<sup>2</sup> and its impact on Sprint's operations and future business plans, Sprint offers its initial views for the Department's consideration in establishing the appropriate process for review and implementation of the FCC's TR Order.

---

<sup>1</sup> D.T.E. 03-60, Procedural Memorandum from Jesse Reyes, Hearing Officer, and Paula Foley, Assistant General Counsel dated September 9, 2003 at 1-2.

<sup>2</sup> CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003) (*hereinafter* "TR Order").

As noted below, the Department should grant Sprint's request to participate in this proceeding, which should be addressed through adjudicatory proceedings with an opportunity for discovery, cross examination, testimony and hearings.

## **II. BACKGROUND**

In its TR Order, the FCC, again, seeks to establish the network elements that must be provided by Incumbent Local Exchange Carriers ("ILECs") to competing local exchange carriers ("CLECs") in order to promote the pro-competitive objectives of the Act, pursuant to Section 251 of the Telecommunications Act of 1996. In determining which network elements must be unbundled and provided to CLECs, the FCC employed the "impairment" standard<sup>3</sup> as required under the Act. The FCC's Order defined impairment and the criteria for determining impairment, and then applied those criteria to individual network elements to make a national determination as to whether or not that network element should be unbundled. The FCC, however, delegated authority to the states to conduct a more detailed, granular impairment analysis to determine whether or not an element should be unbundled in specific markets within that state, and provided the states with specific guidelines to conduct this comprehensive impairment analysis. Essentially, the FCC mandated the states follow a two-step impairment analysis. State commissions must, first, examine the existence of actual competition as an indicator of whether or not CLECs are impaired without access to that element. Presumptively, if the specified numbers of competitors within a defined market are deploying an element themselves, impairment does not exist and the ILEC should not be required to unbundle

---

<sup>3</sup> The impairment standard under Section 251 of the Act requires the FCC to consider whether the failure to obtain access to an ILEC's network element "impairs" a competitor's ability to provide service.

that element in that market. The second step of the impairment analysis involves examination of the potential for competitive deployment of an element if in the first step; actual competition is determined to be insufficient (with the exception of DS1 loops and DS1 transport). If a state commission finds that competitors could economically deploy an element in a specified market, even though they have not yet done so, the Department could make a finding that competitors are not impaired and the ILEC does not have to unbundle that element in that market.

A primary FCC requirement of the state commission impairment analysis is that the operational and economic impairment criteria be applied primarily on a market by market basis. Specifically, the FCC requires that markets be segmented by geography for local circuit switching for mass market (residential and small business customers) and for enterprise customers. The network elements to be addressed by the states include switching for high-capacity loops used for large business customers (DS1, DS3 and dark fiber loops), dedicated transport (DS1, DS3 and dark fiber loops), and mass market (residential and small business customers) local circuit switching used for UNE-P.

The FCC's TR Order mandates that state commission proceedings required by the TR Order be completed within nine (9) months from the October 2, 2003, effective date of the FCC Order with the exception of the optional impairment proceeding regarding local switching used for UNE-P enterprise (large business) customers. The state commission must complete this optional proceeding, if undertaken, and file a petition for waiver of the national finding of non-impairment with the FCC within 90 days of the effective date of the TR Order.

### III. REQUEST TO PARTICIPATE

D.T.E. 03-60 will address whether switching for mass market customers (*i.e.*, residential and small business customers) will continue to be offered as an unbundled element to competing local exchange carriers.<sup>4</sup> Specifically, D.T.E. 03-60 will inquire into the ability of competing carriers to offer local service to mass market customers without access to Verizon's switching facilities.<sup>5</sup> D.T.E. 03-60 will also address loop, transport, and hot cut issues.<sup>6</sup>

Sprint respectfully requests to participate in this proceeding. Specifically, Sprint requests authority to engage in discovery, cross examine witnesses, submit testimony, and file briefs in this proceeding.

Sprint's local exchange service, Sprint Complete Sense, is a UNE-P based offering that is available to residential and business customers. This proceeding will therefore impact the terms and conditions under which Sprint Complete Sense is provided, as well as the underlying loop, switching and transport facilities used to provide this service in Massachusetts.

Documents should be served upon the undersigned counsel at the following address:

Craig D. Dingwall  
Director/General Attorney, State Regulatory  
Sprint Corporation  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

---

<sup>4</sup> D.T.E. 03-60, Notice at 1.

<sup>5</sup> *Id.*

<sup>6</sup> Procedural Memorandum at 2.

#### **IV. SCOPE, NATURE AND TIMING OF PROCEEDING**

The Department requested written comments on the “scope, nature and timing” of this proceeding. The Department also requested parties to comment on whether this proceeding should be conducted as an “adjudicatory proceeding” as defined in G.L. c. 30A, § 1(1), or whether some other Department role is warranted.<sup>7</sup>

##### **A. Scope and Nature of Proceeding**

The scope of this proceeding should involve evaluating impairment related to switching for mass market customers, high capacity loops and transport for DS1, DS3 and Dark Fiber. All these elements currently have a national finding of impairment. In addition, this proceeding will also address the hot cut issues. This proceeding must determine the appropriate geographic market definition for mass market local switching. Then the proceeding must investigate the level of impairment in light of the competitive triggers, competitive supply analysis, and/or any economic barriers to entry as defined by the FCC for loops and dedicated transport on a market by market basis (location for loops, routes for transport).

For the 90-day proceeding, Sprint recommends that if the Department has not yet established the geographic market it is the CLEC’s responsibility to justify the geographic Enterprise local switching market that it proposes to be the basis of the Department’s examination of whether economic and operational impairment exists. Immediately upon the determination of the geographic Enterprise local switching market a comprehensive litigation (adjudicatory proceeding) phase of this impairment

---

<sup>7</sup> Notice at 1.

proceeding should commence, which should include discovery, the filing of testimony, evidentiary hearings and briefing.

**B. Timing of Proceeding**

Given the strict timeframes established by the FCC, Sprint recommends that the Department commence this proceeding immediately and that D.T.E. 03-59 and D.T.E. 03-60 be conducted simultaneously. Sprint will cooperate with the Department and other interested parties to develop a schedule that is consistent with the FCC's nine-month time frame. Sprint recommends that this schedule be adopted at the September 25, 2003 procedural conference.

**V. DISCOVERY**

In the interest of the efficient use of time and other resources, the Department should consider developing an agreed upon set of standard discovery requests, in coordination with NARUC and other state commissions. This would help provide consistency of data and avoid duplication of effort. Further, given the limited timeframe of this proceeding, the Department should implement a protective order process whereby internal company experts are allowed to access confidential information upon execution of a nondisclosure agreement applicable only to the triennial review proceedings.

**VI. BURDEN OF PROOF**

The FCC's TR Order states that the burden of proof is not assigned to any party.<sup>8</sup> The FCC did not adopt a burden of proof approach that places the onus on either

---

<sup>8</sup> TRO Order, ¶92.

incumbent LECs or competitors to prove or disprove the need for unbundling.<sup>9</sup> Rather, the state commissions are under the obligation to initiate investigations at a more granular level with regard to the national findings of impairment.<sup>10</sup>

## VII. CONCLUSION

Sprint appreciates the opportunity to share its initial views on the appropriate process to be utilized in the Department's implementation of the FCC's required network element impairment proceedings. Sprint respectfully requests the Department to grant Sprint's request to participate in this proceeding consistent with Sprint's recommendations.

September 15, 2003

Respectfully submitted,

SPRINT COMMUNICATIONS  
COMPANY L.P.

---

Craig D. Dingwall  
Director/General Attorney, State Regulatory  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004  
202-585-1936  
202-585-1894 (FAX)  
[craig.d.dingwall@mail.sprint.com](mailto:craig.d.dingwall@mail.sprint.com)

Its Attorney

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶93.